Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF MTPCS, LLC D/B/A CELLULAR ONE

Julia K. Tanner
General Counsel
MTPCS, LLC D/B/A CELLULAR ONE
1170 Devon Park Drive, Suite 104
Wayne, Pennsylvania 19087

(610) 535-6900

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INTRODUCTION AND EXECUTIVE SUMMARY

New Wireless Cost Model; ABC Plan Concerns

MTPCS, LLC d/b/a Cellular One and its affiliates (collectively, "MTPCS") are facilities-based wireless carriers serving Montana, Louisiana, Oklahoma, Texas and the Gulf of Mexico. In these Comments, we propose a new wireless cost model to ensure a reasonable transition to a new cost model-based Universal Service distribution system. We also set forth concerns about the ABC Plan, which clearly fails to meet statutory objectives or the public interest regarding the transition of Universal Service support to broadband.

It should be considered imperative that the transition to broadband will be accomplished in a way that ensures rural communities have access to services reasonably comparable to those in more urban areas. In these Comments, MTPCS proposes a plan to help the Commission complete this proceeding in a fair and reasonable way in order to to address the statutory principles it is entrusted with implementing. We urge the Commission to ensure its policies will be competitively neutral, including technology neutrality, consistent with its precedent and the public interest.

Our proposal focuses on cost efficient savings for the Fund and ensuring rural consumers receive access to services comparable to those available in urban areas and reasonable rates. Accordingly, this plan will ensure that the requirements of the Act are fulfilled, and broadband is deployed and maintained in the public interest, without harm to Fund levels. Our proposals enable rural consumers to receive the benefits of services comparable to those received in urban areas, while also ensuring universal deployment of modern broadband and voice networks and

limiting the contribution burden on households. The plan we propose (the "Consumers and Cost Savings" Plan) is as follows.

- Wireless Cost Model. In these Comments, we present a wireless cost model that our companies have developed with CostQuest. This cost model will achieve cost savings for the Fund by requiring divided, rather than duplicate, funding where multiple CETCs exist. It will permit beneficial competition to give high cost area consumers options for service plans and reasonable pricing, while avoiding waste of assets or support. It will not prevent new entry of technologies, but will take advantage of any cost savings or innovations they bring to broadband deployment. It recognizes the exponential growth in consumer use of mobile broadband since 3G deployments in the United States took off in early 2010, and enables deployment and maintenance of mobile broadband as a highly efficient method of reaching many high cost areas. As a necessary adjunct, we propose sufficient mobility support to ensure rural areas will continue to have access to reasonable rates and service options reasonably comparable to those in urban areas.
- Recognition of Small Businesses. Small businesses not only offer reasonable rates and locally tailored services, but also competitively encourage other companies to keep rates and coverage reasonable. In the event the ABC Plan is adopted, we propose that the Commission exempt small business fixed and mobile CETCs from the resultant diminishing support, in order to meet the legislative intent of the statute for rural areas, as described by Senator Rockefeller in the following paragraphs. Such an exemption would be a targeted use of approximately $300 million per year in order to fulfill the principles set forth by the Commission and in Section 254. This would enable rural consumers to remain participants in the mobile revolution.
- State Certification of All ETCs. Finally, we urge the Commission to ensure states retain their statutory authority to designate multiple recipients of high cost funding in an area, in order to not only uphold the Act but also recognize the states' important role in considering regional conditions and local needs.

MTPCS values the Commission's efforts to determine fair and beneficial outcomes for the high cost area whose residents are the intended beneficiaries of the high cost portion of the Fund. As Senator Rockefeller stated in 2010, this is an important trust: [1]

> The residents of rural communities need to know that they have the same access to quality communications as those in more urban areas. That is not just my opinion. It is the law.
>
> In 1996, Congress directed the FCC to make sure that comparable services are available at comparable rates—for everyone in this country, no matter who they are, no matter

[1] / Press Release, *Chairman Rockefeller Remarks on Universal Service: Transforming the High Cost Fund for the Broadband Era* (June 24, 2010), available at http://commerce.senate.gov/public/index.cfm?p=PressReleases

> where they live. This is what our universal service system was designed to do. It is the principle that should guide us, as we seek to update universal service policy to reflect the broadband and wireless challenges of our day.
>
> I want to close by recognizing that this subject is not simple, and updating the universal service system is not easy. But it is enormously important, and it is the right thing to do.

Similarly, Senator Snowe has commented, "It is in our national interest to ensure that these [rural] areas are part of the information superhighway."[2] The Act provides that that access in rural and insular areas is a principle upon which the agency's policies shall be based:

> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services… reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

47 U.S.C. 254(b)(3).

Simply put, the Advanced Mobility Fund mechanism proposed by US Telecom does not meet these principles. It is designed to result in zero or greatly diminished funding for rural wireless carriers. As such, it is nothing more than an attempt by the largest carriers to eliminate competition from services that best meet the needs of increasing numbers of consumers in rural areas and therefore are a competitive challenge.

The Act requires that universal service mechanisms must be "specific, predictable and sufficient," 47 U.S.C. 254(b)(5), but the ABC Plan would require CETC funding to be dependent upon unpredictable and insufficient amounts of ILEC leftovers. In other words, CETCs would receive only any amounts the ILECs do not take, as little as zero and never more than one-quarter of the firmly-capped amounts CETCs receive today. The US Telecom Plan would discourage the spread of competitive mobile broadband, which consumers greatly desire as

[2] / 141 *Cong. Rec.* S7977, S7990 (daily ed. June 8, 1995).

evidenced by exponentially increasing adoption rates.[3] This is neither in accordance with the statutory principles nor with the general intent of the pro-competitive amendments to the Act in 1996, nor does it coincide with the rapidly accelerating consumer interest in access to mobile broadband technologies.

As Chairman Genachowski said in March of this year:

> ***"Mobile broadband is being adopted faster than any computing platform in history. The number of smartphones and tablets being sold now exceeds the number of PCs."***[4]

Objective analysts and international bodies concur.[5] The many advantages of the "killer app" of mobility[6] are producing significant, rapid growth in demand for wireless broadband. Moreover, mobile broadband technology developments are rapidly increasing throughput

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[3] / *See* Lehr, William, "Mobile Broadband and Implications for Broadband Competition and Adoption"(MIT: [date], prepared for Broadband for America), at 14, available at http://people.csail.mit.edu/wlehr/Lehr-Papers_files/LehrMobileandBroadbandCompetition%20RELEASED%20Nov%2022%202010.pdf (stating "Mobility is the killer app" and "Enabling mobility for these Internet-powered communication modes enhances the value of the service by expanding the range of context in which communications may occur.").

[4] / Chairman Julius Genachowski, "The Clock is Ticking," Remarks on Broadband (March 16, 2011) available at http://www.fcc.gov/document/genachowski-broadband-clock-ticking

[5] / *See, e.g., Nielsen, In US, Smartphones Now Majority of New Cellphone Purchases* (June 2011), available at http://blog.nielsen.com/nielsenwire/online_mobile/in-us-smartphones-now-majority-of-new-cellphone-purchases/ ; ("55 percent of those who purchased a new handset in the past three months reported buying a smartphone instead of a feature phone, up from 34 percent just a year ago."); Aaron Smith, Pew Internet & American Life Project, 35% of American Adults Own A Smartphone (July 11, 2011) at 3, available at http://pewinternet.org/~/media//Files/Reports/2011/PIP_Smartphones.pdf (87 percent of smartphone owners surveyed use their device to access the Web or email).

OECD data shows that as of December 2010, the number of wireless broadband subscriptions in the United States was approximately 165.4 million, in contrast to approximately 85.7 million fixed broadband subscriptions. *See* OECD Broadband Portal 1(c), available at http://www.oecd.org/document/54/0,3746,en_2649_34225_38690102_1_1_1_1,00.html#Services_and_speeds and http://www.oecd.org/dataoecd/22/15/39574806.xls ; *see also* Wireless Broadband Subscriptions Top Half a Billion, Says OECD (December 2010), available at http://www.oecd.org/document/4/0,3746,en_2649_34225_42800196_1_1_1_1,00.html

Comparing those statistics with six months earlier: in half a year, fixed broadband subscriptions increased by approximately 5 million while wireless broadband subscriptions leapfrogged with an increase of approximately 27.4 million. In June 2010, United States had 80 million fixed broadband subscriptions and approximately 138 million wireless broadband subscriptions. OECD, Total Broadband Subscribers by Country (June 2010), http://dx.doi.org/10.1787/888932398062

[6] / *See Lehr, supra.*

speeds,[7] which in turn encourages the skyrocketing adoption rates observable since early 2010.

The spread of desired modern technologies, including mobile broadband, must be encouraged rather than deterred. Numerous commenters agree that competitive neutrality is important,[8] and Google, Sprint, Vonage, Skype and the Ad Hoc Telecommunications Users Committee support this reasonable principle in connection with contributions and also distributions.[9]

We believe that overall, looking from the perspective of ten years from now, the Commission will prefer to have equitably supported provision of technologies now preferred by consumers, rather than choosing sides in a manner that diminishes the strength of the least cost technology which is increasingly preferred by consumers. Mobile broadband is deployed more efficiently than landline broadband. We support the Commission's proposed throughput rates for supported speeds, and rules accommodating the agency's proposed range in this regard. As the Chairman stated, "even 3G wireless services can deliver speeds capable of handling a dramatically wide array of consumer applications."[10] The efficient construction of mobile broadband brings savings to the Fund, and rapid deployment is further enabled by the existing foundation of current networks, thus more expeditiously addressing the gap between rural communities and urban areas, as well as between the United States and other nations.

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[7] / *See infra text accompanying nn. 17-18.*

[8] / *See, e.g.*, Letter, Ad Hoc Telecommunications Users Committee, Google, Skype, Sprint, and Vonage, at 4, 7 n. 25 (August 18, 2011) ("Ad Hoc et al. Letter"); Comments of the Rural Cellular Association; Comments of U.S. Cellular; Comments of Cellular South; Comments of the Rural Telecommunications Group; Comments of Viaero Wireless; Letter, National Cable & Telecommunications Association (NCTA), WC Docket No. 10-90, GN Docket No. 09-51 et al. (August 3, 2011) ("NCTA letter").

[9] / *See Ad Hoc et al. Letter, cited supra.*

[10] / *See infra* n. 26 & accompanying text.

In these Comments, we respectfully propose aspects of any universal service reform plan that are essential to preserving services in high cost areas that are comparable to those available in urban areas.

I. A Reasonable Level of Support Must Be Available for Mobile Services.

A. Amount of Support Available for CETCs

The rates of mobile adoption set forth in the Commission's data reports, international and economic studies show that wireless is the increasingly chosen technology for consumers' voice and data communications.[11]

And yet, the number of mobile broadband carriers – the number of companies providing rate plan options for consumers - are decreasing at an alarming rate, particularly in rural areas. Just over a decade after the first broadband PCS auctions in 1995, the number of PCS and cellular carriers in many high cost areas have diminished from as many as eight down to three or two, and many areas of the country remain unserved or significantly underserved, for reasons of consolidation, license abandonment, and high buildout and operations costs. We encourage the Commission and staff not to adopt policies that would further the reduction or elimination of mobile service options from rural communities.

i. The ABC Plan Would Ignore Sunk Investments in Mobile Broadband, Indisputably the Lowest Cost Method of Increasing Broadband Coverage.

The Advanced Mobility Fund mechanism proposed by US Telecom[12] will result in zero funding in the proposed Mobility Fund from time to time, or always.[13] By this reduction or

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[11] / *See* data cited *supra* n.5*; see also, e.g.,* Aaron Smith, Mobile Access 2010, available at http://www.pewinternet.org/Reports/2010/Mobile-Access-2010.aspx ("Cell phone and wireless laptop internet use have each grown more prevalent over the last year**…. As of May 2010, 59% of all adult Americans go online wirelessly**") (emphasis supplied); Cecilia Kang, As Smartphones Proliferate, Some Users Are Cutting the Computer Cord, Washington Post (July 12, 2011) ("The findings released Monday by the Pew Internet & American Life Project highlight the breakneck speed consumers are adopting smartphones — faster than just about any high-tech product in history.").

elimination of support to the most efficient method of building broadband, the ABC Plan would accelerate the decline in choices available to consumers. Moreover, it would ignore the significant funds already invested over the last six or seven years in rapid buildout of PCS infrastructure, and invested for decades in cellular.

CETCs currently receive only a quarter of the high cost fund while contributing 40% of the entire Fund. To further diminish this already disproportionately small support to zero or by one-quarter again would be to abandon the public interest – to abandon the most efficient means of spreading broadband to rural consumers and the service most desired by consumers. Mobility does not always pay for itself. Real costs exist, including the high expenses of operating networks already constructed in high cost areas. However, as a technology with efficient deployment and operating costs, this is the logical choice for the consumer interest in keeping the Fund efficient while ensuring high cost areas have access to broadband. The ABC Plan, conversely, is structured to disadvantage the spread of wireless options, and if adopted will result in a monopoly in rural areas without other options for consumers. One or two of the largest nationwide carriers could if it desires outbid smaller carriers in an auction, simply in order to dispose of competitors. This would not, however, benefit consumers who desire the services and rate plans of those competitors.

ii. Reform Must Recognize the Rights of Consumers, Their Exponentially Increasing Adoption of Mobile Broadband (CAGR of 92 Percent from 2010 to 2015), And Mobile Broadband Capabilities of 1 Gb/s Downlink / 500 Mbps Uplink by 2012.

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[12] / *See* Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) ("ABC Plan").

[13] / The Mobility Fund would receive funds only if support is left over from the primarily landline and extremely large conglomerate recipients of universal service funding:

> The available AMF support in a given year is the difference between the overall constraint on the size of the high-cost fund and the sum of support from the CAF for price cap LEC areas, support from the transitional access replacement mechanism for price cap LECs, any remaining legacy support provided to price cap incumbent LEC ETCs and CETCs, and any support provided to rate-of-return incumbent LECs.

Id., at Attachment 1 (Framework of the Proposal) at 8.

Commenters such as RCA and cable interests have urged the Commission to remember the needs of CETCs and consumers. NCTA states: "We [have] recommended that the Commission's reform efforts take into account competitive providers and consumers, rather than focusing solely on incumbent carriers."[14] Wireless networks are widely accepted as the most efficient technology for deploying broadband and therefore the best choice for net payors rationally seeking to keep their fund payments reasonable.

Moreover, consumers are increasingly adopting mobile broadband. Mobile data traffic grew four times faster than fixed traffic from 2009 to 2010, and is anticipated to increase 26 times from 2010 to 2015, according to Cisco Systems: "Mobile data traffic will grow at a compound annual growth rate (CAGR) of 92 percent from 2010 to 2015, reaching 6.3 exabytes per month by 2015."[15]

Mobile broadband throughput is increasing rapidly, catching up to the earlier-developed fixed broadband.[16] Average actual wireless speeds have more than tripled since 2010 as a result of transitions from 2G to 3G and early 4G network technologies. In March, the speediest large network had average download speeds in excess of 6 mbps and average upload speeds exceeding

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[14] / *See* NCTA Letter, *cited supra.*

[15] / See Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2010–2015, http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.html ("Cisco Whitepaper").

[16] / As noted in the Cisco Whitepaper, *supra,* "The current growth rates of mobile data traffic resemble those of the fixed network from 1997 through 2001, when the average yearly growth was 150 percent." DSL was invented in the 1980s, and cable broadband was first rolled out in 1996 and 1997. See Comments of Covad Communications Company, NTIA Docket No. 011109273-1273-01, available at http://www.ntia.doc.gov/legacy/ntiahome/broadband/comments4/Covad.htm#_ftn8. In contrast, mobile 3G research and development projects started in the early 1990s, the first GSM and CDMA standards were released in 1992and 1995, respectively, and the first commercial 3G system was launched in October, 2001 by NTT DoCoMo, in Japan. [*See* UMTS 3G History, http://www.radio-electronics.com/info/cellulartelecomms/umts/3g-history.php; *3GPP: The Mobile Broadband Standard,* Releases, available at http://www.3gpp.org/Releases ; http://www.radio-electronics.com/info/rf-technology-design/cdma/what-is-cdma-basics-tutorial.php ; *see supra* n.3 (UMTS 3G History, www.radio-electronics.com).

5 mbps).[17] Actual LTE and LTE-Advanced will bring additional major increases: **release 10 of LTE-Advanced is expected to reach speeds of 1 Gbit/s (DL) / 500 Mbps (UL), and the current Release 8 supports up to 300 Mbit/s download.** [18]

Nielsen data shows that "55 percent of those who purchased a new handset in the past three months reported buying a smartphone instead of a feature phone, up from 34 percent just a year ago."[19] Those increasing smartphones purchases are resulting in increasing mobile Web use: Pew Internet has found that 87 percent of smartphone owners surveyed use their device to access the Web or email.[20] The number of U.S. mobile subscribers watching video on their mobile devices rose more than 40 percent year-over-year in both the third and fourth quarters of 2010.[21]

OECD data shows that **as of December 2010, the number of wireless broadband subscriptions in the United States was approximately 165.4 million, in contrast to**

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[17] / Mark Sullivan, "4G Wireless Speed Tests," PC World (March 13, 2011), available at http://www.pcworld.com/article/221931/4g_wireless_speed_tests_which_is_really_the_fastest.html

[18] / *See* Parkvall, Stefan; Astely, David (April 2009). "The evolution of LTE toward LTE Advanced". *Journal of Communications* 4 (3), at 150 Table I; *see also, e.g., http://en.wikipedia.org/wiki/3GPP_Long_Term_Evolution;* 4G Americas, *Coexistence of GSM, HSPA and LTE, available at http://www.4gamericas.org/documents/4G_Americas_Coexistence_of_GSM_HSPA_LTE_May%202011x.pdf, at 48 (May 10, 2011).*

[19]/ *In US, Smartphones Now Majority of New Cellphone Purchases* (June 2011), available at http://blog.nielsen.com/nielsenwire/online_mobile/in-us-smartphones-now-majority-of-new-cellphone-purchases/ ; *see also Number of Americans Watching Mobile Video Grows More than 40% in Last Year* (March 2011), available at http://blog.nielsen.com/nielsenwire/online_mobile/number-of-americans-watching-mobile-video-grows-more-than-40-in-last-year/

[20] / Aaron Smith, Pew Internet & American Life Project, 35% of American Adults Own A Smartphone (July 11, 2011) at 3, available at http://pewinternet.org/~/media//Files/Reports/2011/PIP_Smartphones.pdf

[21] / Nielsen, State of the Media: Mobile Usage Trends: Q3 and Q4 2010, available at http://blog.nielsen.com/nielsenwire/wp-content/uploads/2011/03/State-of-the-Media-MOBILE-Q3-Q4-2010.pdf

approximately 85.7 million fixed broadband subscriptions.[22] Just six months earlier, in June 2010, United States fixed broadband subscriptions stood at 80 million and wireless broadband subscriptions at approximately 138 million.[23] In other words, in half a year, fixed broadband subscriptions increased by approximately 5 million while wireless broadband subscriptions leapfrogged with an increase of approximately 27.4 million.

Pew Internet concurs: "On the mobile side, there continues to be steady growth in those accessing the internet by smartphones and laptops. Our most recent survey completed around Memorial Day indicated that 59% of Americans now connect via smartphone or laptop."[24] Nielsen notes that there are more mobile phone web users than homes with a DVD player or a VCR.[25] Moreover, coming generations are adopting wireless broadband almost unanimously: 92% of four-year college undergraduates currently use wireless Internet access (for some, in addition to other methods).[26]

It is evident from these facts that consumers increasingly desire and use mobile broadband, and it is being delivered, at least in urban areas. A sufficient and properly structured

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[22] / *See* OECD Broadband Portal 1(c), available at http://www.oecd.org/document/54/0,3746,en_2649_34225_38690102_1_1_1_1,00.html#Services_and_speeds and http://www.oecd.org/dataoecd/22/15/39574806.xls ; *see also* Wireless Broadband Subscriptions Top Half a Billion, Says OECD (December 2010), available at http://www.oecd.org/document/4/0,3746,en_2649_34225_42800196_1_1_1_1,00.html

[23] / OECD, Total Broadband Subscribers by Country (June 2010), http://dx.doi.org/10.1787/888932398062

[24] / Lee Rainie, Director of the Pew Internet & American Life Project, *Presentation*, "I'm OK, They're Not: Trying to unravel what internet users want when it comes to governing the internet" (July 18, 2011) available at http://pewinternet.org/Presentations/2011/Jul/Internet-Governance-Forum.aspx

[25] / *See* Nielsen, "Media Universe," http://blog.nielsen.com/nielsenwire/wp-content/uploads/2011/01/media-universe-lg.png

[26] / Aaron Smith, Lee Rainie, Kathryn Zickuhr, Pew Internet & American Life Project, *College Students And Technology,* available at http://pewinternet.org/Reports/2011/College-students-and-technology/Report.aspx

fund is necessary in order to ensure that rural areas receive comparable services at reasonable rates.

iii. Mobile Broadband Is Important to Rural Jobs And Economic Development. The Fund Should Take Advantage Of Cell Sites Already Built And Moving to Broadband, Rather Than Sidelining Sunk Investments And Existing Jobs.

The role of mobile broadband in rural development is important, and it is already being deployed in some areas, at a very reasonable cost. As Chairman Genachowski has said:[27]

> ***[T]he Broadband Plan also placed unprecedented emphasis on mobile broadband, because few sectors of our economy offer greater opportunities for economic growth and improvements to our quality of life. The hunger for mobility is even greater than many imagined a year ago, because even 3G wireless services can deliver speeds capable of handling a dramatically wide array of consumer applications, from entertainment, to education, to health care.***

Carriers like MTPCS use all support for the intended purposes, and work diligently to meet the need for the supported services. Given the progress of mobile broadband technology, most regional and small carriers are in the midst of upgrades to broadband. We urge the Commission not to withdraw their support during this critical time span. Leaving stranded infrastructure in such markets, forcing existing service providers to retreat from rural areas, leaving service gaps and job losses in their wake, and accepting that rural consumers can be adequately served by only to one or two nationwide carriers would be wrong and would not serve the public interest.

Rural consumers should not be required to give up the telecommunications services coverage, jobs and associated rural development benefits in these areas as a result of existing mobile carriers' network infrastructure and operations. A new report from Deloitte, as described

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[27] / *See* "The Clock is Ticking," *supra* n. 4.

by an industry observer, indicates wireless broadband is expected to have a significant role in expanding rural job creation:[28]

> As with the growth of the Internet, widely deployed 4G wireless networks may spur the development of entirely new businesses and professions that capitalize on this infrastructure. As Deloitte vice chairman and U.S. media and telecommunications sector leader Phil Asmundson recently told Marketplace Tech Report: "4G is really going to be that opportunity to literally leave your computer behind."
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> This could have profound implications for job creation in rural areas, many of which have been hit especially hard by the recession.

iv. Consumers Have An Interest In Reasonable Rates.

Commissioner Clyburn has noted that government studies show low income Americans are adopting broadband less rapidly due primarily to service and equipment prices, rather than disinterest.[29] Supported carriers often recognize the needs of their customers by offering rate plans that are more affordable than those offered by larger companies. These rate plans are valued by consumers and are another reason why supporting CETCs provides value to the agency. NTIA recently found that approximately two thirds of the rural consumers who said they might need or want broadband at home cited cost as a factor in not having it.[30] MTPCS offers more minutes for less cost to consumers. For example, in addition to offering nationwide calling plans, we offer statewide calling plans. Our statewide plans are a better value for customers interested in in-state services than the major carriers' calling plans, which are nationwide only. Customers in many

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[28] / Amy Gahran, Special to CNN: COULD BETTER MOBILE NETWORKS CREATE MORE U.S. JOBS?, available at http://edition.cnn.com/2011/TECH/mobile/08/24/4g.stronger.gahran/ (August 24, 2011); *see also* Deloitte: U.S. Could See $53 Billion in 4G Network Investments by 2016, Creating 771,000 New Jobs: New 4G products and services could drive additional growth, Press Release, http://www.deloitte.com/view/en_US/us/press/Press-Releases/1fb3714f990f1310VgnVCM3000001c56f00aRCRD.htm (August 22, 2011).

[29] / Public Notice, *Statement of Commissioner Mignon Clyburn Regarding Broadband Affordability and Competition* (March 10, 2010).

[30] / NTIA, *Digital Nation, Expanding Internet Usage: NTIA preview* (February 2011), at 5; see also Family Income Range correlation, *id.* at 8.

of our areas would rather save by receiving twice as many minutes on our statewide calling plans as they would receive on the large carriers' nationwide plans at those prices.

Rates are not only included in the principles currently set forth in Section 254, but also recognized in the Commission's third proposed goal: "**We must also make sure that rates are reasonably comparable so that consumers have meaningful access to these service**s."[31] Absent rate regulation, which imposes a significant administrative burden on the agency and carriers, history has shown that **competition is necessary in order to keep rates reasonable.**

> ***"The history of competition in the mobile wireless market suggests that the entry of additional providers has resulted in consumers paying less, receiving new features and better handsets, and enjoying higher quality service."***

Department of Justice, *Ex parte, In the Matter of Economic Issues in Broadband Competition*, GN Docket No. 09-51 (January 4, 2010). Indeed, Congress intended to further competition when it modified the universal service provisions of the Act.[32] Supporting CETCs adequately

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[31] / *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, at 80 (2011).

[32] / *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8781-82 (para. 4) (1997) ("*First Report and Order*") (subsequent history omitted) (footnotes omitted) (quoting Joint Explanatory Statement of the Committee of the Conference (H.R. Rep. No. 458, 104th Cong., 2d Sess.), at 1) ("[t]his proceeding is part of a trilogy of actions that are focused on achieving Congress's goal of establishing a '*pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening up all telecommunications markets to competition.'* The other components of the trilogy are the local competition and access reform rulemakings. Pursuant to the mandate of the 1996 Act, these three proceedings are collectively intended to encourage the development of competition in all telecommunications markets.").

The Commission stated in 1997: "[w]hen it enacted section 254 of the Communications Act, *Congress* set forth the principles to guide universal service reform. It *placed on the Commission the duty to implement these principles in a manner consistent with the pro-competition purposes of the Act*." *Id*. at 8783 (¶ 7).

In 2000, the Commission again noted:

> In passing the Telecommunications Act of 1996 (1996 Act) [Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151 *et seq*.], Congress sought to establish "**a pro-competitive, deregulatory national policy framework**" for the United States telecommunications industry. In the 1996 Act, Congress also directed

will help maintain competition, so reasonable calling plans can remain in high cost areas where CETCs receive support. This in turn will maintain the recent rapid increases in customer adoption of broadband, and thus the United States will catch up to the international community of countries in broadband adoption.

v. Mobile Broadband Should Receive Not Less Than $1.3 Billion Annually, In Light of Competitive Neutrality And The Public Interest in Mobile Broadband Services. Any Satellite Funding Would Be Separate From These Amounts.

Lenders and investors do not accept business plans dependent upon unpredictable usurpation by other companies. Support must be predictable and reasonably targeted to the forward-looking costs of serving high cost area customers. It cannot rely upon wildly fluctuating amounts of support provided to some other group of companies, nor should the entirety of a carrier's funding depend upon whether some other carrier decides to provide service in the first carrier's coverage areas. The costs of deploying and operating mobile broadband networks are reasonable, but not nonexistent.[33]

Accordingly, for reasons of predictability and competitive neutrality, we support a model based on forward-looking costs to determine support amounts for mobile broadband, with the right to support not secondary to the command of some other carrier or technology. Permitting a carrier that claims, whether correctly or not, that its coverage exists in an area where it would eliminate support for some other carrier, would contravene good public policy. A better result is a mechanism that does not depend upon the location of other carriers as a determinant of the

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> that universal service support "should be explicit and sufficient to achieve the purposes" of section 254 [47 U.S.C. § 254(e)], which include the purpose that **all Americans should have access to telecommunications services at affordable and reasonably comparable rates**.

Eleventh Report & Order, CC Docket No. 96-45, FCC 00-193, ¶ 4 (2000) (emphasis supplied).

[33] / *See, e.g.,* Letter from David A. LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (filed July 25, 2011); Letter from David A. LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (filed August 1, 2011).

applicant's support, but instead simply determines which areas are high cost and applies a cap limiting per-line funding, in order to keep the amounts rational.

Wireless networks are not deemed desirable or viable by consumers based only upon individual cell site locations. Rather, desirability and viability for consumers is based upon the overall coverage experience that can be provided. Therefore, whether or not one carrier has or claims to have adequate service in a small geographic area should not be allowed to determine whether support should be withdrawn from a CETC whose own service footprint includes that area and possibly other areas. Doing so could ultimately result in the dismantling of the CETC's overall network due to the unexpected withdrawal of necessary and appropriate support.

The amount of support for mobile broadband should be reasonable, unlike that proposed in the ABC Plan. Sufficient support is the logical conclusion to be drawn from the previously enumerated consumer interests in these technologies, as well as legislative intent.[34] The alternative would violate principles of law and.communicate to rural consumers that they are not worthy of services comparable to those in urban areas.

At a minimum, half of the Fund should support mobile broadband, for reasons of competitive neutrality. And yet, CETCs are already required to accept diminished funding, due to portability, the cap, and the absence of any guaranteed rate of return. Accordingly, to be reasonable, we believe the Fund could accomplish its purposes by disbursing not less than $1.3 billion annually to mobile carriers, as proposed by U.S. Cellular.[35] In order to ensure use only for deployment, operation and maintenance of broadband networks, disbursements must

[34] / *See, e.g.,* Cisco Whitepaper, *supra;* Pew Internet & American Life Project,

[35] / *See* US Cellular, Letter from David A. LaFuria, Counsel to United States Cellular Corporation, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 05-337 et al., at 5 (filed July 29, 2011).

rationally relate to the amounts needed for broadband services in supported areas, based upon a cost model. We propose a mobile broadband cost model herein.

vi. Projected savings from ICC reform would not help offset reduced CETC support by more than *de minimus* amounts.

The Public Notice, section I.A, asks to what extent would projected savings from ICC reform help offset reduced CETC support? For MTPCS and affiliates, the savings from ICC/access reductions would be very minimal - far less than the USF currently used to keep building and maintaining sites where needed in rural Montana, Oklahoma and Louisiana. A reduction in current ICC and access rates absolutely would not compensate for loss of USF under the ABC Plan. In high cost areas, population densities are low, rural development needs are high, and mobile services are essential.

In order to fulfill its public interest mandate without increasing the size of the Fund, the Commission must resist calls to divert portions of the Fund for other than the intended purposes. As noted by the State Members of the Joint Board, "Unrealistic proposals on intercarrier compensation (e.g., "bill and keep" or $0 and $0.0007/MOU rates) will simply put additional and undesirable "revenue replacement" pressures on the federal USF mechanism and will retard other FCC goals."[36] Reimbursement of rate reductions for profitable private lines of business, outside the Fund, are not directly related to the statutory principles for high cost universal service. Such reimbursement would be comparable to compensating mobile carriers for a mandatory decline in roaming revenue – where the services in question are not the supported services, we believe the Act would require that any reimbursement should be addressed outside the Fund. Instead, the Fund must continue to directly support cost-efficient provision in high

[36] / Letter, State Members, at 6 (filed August 14, 2011).

cost areas of the supported services which, as the Commission has proposed, should include broadband.

B. Small Business Exemption

In the event it appears the structure adopted in this proceeding would tend to materially reduce support for CETCs, as the ABC Plan would, we ask the Commission to adopt a small business CETC exemption to help continue the beneficial transition of rural wireless services to broadband. The Office of Advocacy of the U.S. Small Business Administration has urged the Commission:

> to examine the vital role that small broadband providers play in creating a robust, competitive market for broadband services. Advocacy believes that it is crucial for the Commission adopt policies that maximize the nation's existing network infrastructure and encourage further innovation and investment in broadband infrastructure and services. Small broadband providers will be an indispensable resource to that end.[37]

Our proposal would comply with this request. The mechanism would be structured to track the definition of small business communications entities (landline and CMRS) established by the federal government. As proposed in our previous filings in this docket, we ask that the Commission grandfather support for entities meeting the Small Business Administration definition of 1500 employees or less per operating company. This endeavor would utilize only approximately $300 million per year as regards CETCs, a small price to pay for the public interest in competitive services from in-state providers at reasonable rates, efficiently increasing the spread of broadband throughout the country without increasing the amounts of funding going to such entities. As previously noted, small businesses offer calling plans, services and coverage that better serve some customers – giving customers options in rural areas that are often a better value than those of larger carriers. Small businesses develop creative rate plans, technology

[37] / *See* Comments of the Office of Advocacy, U.S. Small Business Administration, GN Dkt. No. 10-188, DA No. 10-1743 at 1 (filed October 15, 2010).

configurations and service concepts that can establish a successful marketplace presence. Absent small businesses, these consumer benefits would not exist, and high cost and insular areas would experience decline in the telecommunications options, rural development, and jobs currently provided by numerous small businesses.

C. The MTPCS Cost Model Is The Most Efficient And Equitable Way to Determine Mobility Support.

Whether in a Mobility Fund, a Connect America Fund, or some hybrid, support goals would be best accomplished with cost models loaded with the forward-looking costs of each individual technology, rather than reverse auctions in which large carriers could bid the support to zero.

In the Attachment, we submit documentation of the forward looking cost model developed by CostQuest. This cost model currently estimates the costs for mobile broadband services in Louisiana. Using the cost output, the CostQuest model then provides a platform to investigate high-cost support issues. CostQuest explains that the model is consistent with FCC objectives in developing Forward Looking Costs for universal service, and utilizes methodologies consistent with recent efforts by the FCC to understand the cost of broadband deployment.

MTPCS submits the attached preliminary model developed with CostQuest and urges the Commission to consider the merits of this modeling approach. The MTPCS model examines Universal Service support costs for the State of Louisiana only. Further analysis needs to be conducted to ensure the applicability of the model, including as it pertains to other states. We believe strongly that the output is valid and that the principals underlying its approach are necessary and important to any model the Commission ultimately adopts. More specifically:

- The model should not require adoption of any specific technology or favor any specific technology, whether fixed versus mobile or LTE versus WiMAX, but instead should maintain technological neutrality.
- The model should calculate and assign support to a geographic area appropriate to fund the construction of a single network capable of serving realistic customer loading.
- The support calculated and assigned to a geographic area may be divided among multiple CETCs to ensure competition, choice, and a robust service ecosystem in rural communities, just as exists in urban communities.
- The model should consider on-going expenses of maintaining network are significantly higher in rural high-cost areas; do not diminish over time; and increase both with increased customers and with increased usage from expanding broadband applications.
- In order to maintain a reasonable fund size, the model should cap support even in the highest cost areas at a level that provides some incentive to carriers, but may not necessarily cover all costs, rather than simply excluding some areas as too expensive to support.

The model predicts amounts required for deployment, operation and maintenance of mobile broadband services. Moreover, a wireless cost model of this nature will help avoid stranding the billions of dollars in universal service support, loans and investments, already sunk into wireless infrastructure **in the process of being converted to broadband – or already providing such services today**. These existing networks, most built within the past 15 years,

are still actively serving increasing numbers of customers, and lenders and investors have an interest in their continued success.

The agency must ensure its actions are technology neutral and provide all carriers with equal opportunities for support. The Commission will best serve the public interest if its Order meets the goals of universal service and the interests of the public in sufficient, predictable support for continuation of the services and rates upon which local customers and jobs rely. The MTPCS model will avoid the elimination of support from an unpredictable patchwork of small areas. Instead, the model permits several carriers to serve overlapping portions of applicable areas, without increasing costs for the Fund. It is important to note that under this model, the existence of several companies drawing support does *not* increase costs for the Fund. A CETC may be required to divide its support with other CETCs, and collectively the entities could never exceed the total modeled support for the area.

We believe eliminating more than three quarters of existing support for the most efficient technology would not keep funding levels low; the opposite is true. The cost model we propose deploys low cost technology to ensure broadband is deployed across the greatest possible number of regions.

This model would not need to rely upon carrier-provided information regarding site locations which are frequently modified and recalibrated, because support would be disbursed based upon the high costs of serving certain areas in light of their population density and terrain, determined from government-sourced statistics.[38]

[38] / As satellite is not a technology with similar costs to CMRS, this model does not address satellite. We do question the extent to which funds should be shifted away from existing networks in order to bring another technology to rely upon the Fund.

We continue to believe that reverse auctions would favor only the largest carrier in each area, thus doing a disservice to customers desiring other services, other combinations of services, or differently priced services. Competitive bidding for universal service would not aid the federal Treasury; at issue is a Fund largely supported by wireless carriers and wireless customers. Others knowledgeable about rural and insular areas, such as the Office of Native Affairs and Policy and the Rural Cellular Association, as well as the State Members of the Joint Board, also have opposed competitive bidding for support.[39]

Avoiding auctions in the universal service context will have the beneficial result of relieving the Commission's economists of an excessive workload burden, freeing them to focus upon the complex necessity of bidding mechanisms for new and reallocated spectrum releases.

Reverse auctions would reward the most profitable carriers that chose to focus on major urban areas rather than rural high cost areas in the past, as the State Members note, or carriers that in fact divested themselves of many high cost markets, while concentrating on accumulating revenues from urban areas. Moreover, if reverse auctions occur, carriers aside from the winner may decide not to serve those high cost areas, and the carrier that won the auction would have little incentive to provide adequate service – to the contrary, in light of its low bid, it would be motivated to build as little as possible and provide as low a quality of customer service, retail presence and service options as they could. And yet, if the FCC decides that the winning bidder is not serving the area acceptably, who would remain to assume the task? Those who lost the auction may decommission their equipment and leave the area. They would not be likely to return to the area for the low amounts to which the winning carrier had bid support down.

[39] / *See also, e.g.,* Letter, State Members of the Federal-State Joint Board ("State Members") (July 14, 2011) (the auction mechanism "disadvantages carriers that have built out broadband facilities in the majority of their unserved areas (logically leaving the most expensive unserved areas for last) in favor of those that have not built out.").

Instead, the Commission should trust carriers that have shown past commitment to high cost areas and that will meet the public interests in diligent and speedy broadband deployment; upgrading existing facilities is generally faster than new network deployment.

Utilizing auctions for universal service rather than respecting state designations of ETCs would be contrary to the Act, which gives States the right to designate eligible carriers if they choose. States often conduct extensive proceedings, requiring maps, witnesses, affidavits, and inquiry into the expertise and resources of the applicable carriers. The resulting competitive carriers are often subject to rules specifically designed to regulate provision of services in those States. For example, in Montana, CETCs are subject to regulations including a requirement of coverage buildout to 98 percent of potential customers.[40] In Oklahoma, CETCs are subject to rules in Chapter 55, Subchapter 23 of the Oklahoma Administrative Code: Wireless Eligible Telecommunications Carrier. We believe the States have demonstrated a careful approach to their role in designation of eligible carriers that will provide service in their States.

D. States Must Retain Their Designation Rights

The Public Notice asks, in Section I.C.5, what should be the States' role with regard to implementation of reform. We respectfully suggest that, at a minimum, States would retain their statutory authority to designate multiple recipients of high cost funding in each area, in recognition of the States' informed role in assessing regional conditions and local needs. Section 214(e)(2) provides that the right to designate ETCs, including CETCs, inheres in the States.[41] In this regard we again agree with the State Members of the Joint Board:

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[40] / *See* ARM § 38.5.3213.

[41] / The Act provides:

> A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of

> States are uniquely qualified to differentiate the hotspots where competition is vibrant from the less desirable areas where broadband is not available. States are also best able to assess local conditions generally, and service quality in particular. Finally, States are uniquely qualified to identify public benefits and harms that occur when a new ETC is designated. State commissions and consumer advocates have frequent ongoing contacts with residential and business customer populations in many settings.

Comments, State Members of the Federal State Joint Board on Universal Service, at 88-89 (May 2, 2011).[42] We concur that the States retain these qualifications and as the statute has not been amended, the States' designation authority remains intact.

II. The Fund Must Not Diminish the Ability of Carriers to Provide Services in High Cost Areas by Bestowing Upon any Group a Monopoly Right to Receive Available Support, or the Ability to Exclude other Carriers from Receiving Support.

A. USF Policy Must Be Technology Neutral.

In amending the Communications Act to change the universal service provisions from monopoly to competitive provision of service, the Conference Committee stated that Congress intended to establish a '*pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening up all telecommunications markets to competition.*'[43] Building upon this statement, and proceedings by the Joint Board, the FCC in 1997 adopted the principle that universal service mechanisms and rules should "neither unfairly

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> all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. 214(e)(2).

[42] / *See also, e.g.,* Letter, State Members, at 7, Section B.2 (August 14, 2011) ("federal preemption of State authority to designate ETCs… is contrary to both the letter and the spirit of TA-96.").

[43] / *See* Joint Explanatory Statement of the Committee of the Conference (H.R. Rep. No. 458, 104th Cong., 2d Sess.), at 1 (also noting, "Pursuant to the mandate of the 1996 Act, these three proceedings are collectively intended to encourage the development of competition in all telecommunications markets."), *cited in Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8781-82 (para. 4) (1997) ("*First Report and Order*") (subsequent history omitted).

advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another."[44] This principle advances the twin goals of universal service and competition. As the agency noted at the time**, the Joint Board had recommended that the principle of competitive neutrality include the concept of technological neutrality "by allowing the marketplace to direct the development and growth of technology** and avoiding endorsement of potentially obsolete services."[45]

This principle has been incorporated into numerous state and regulatory regimes. Not only is it now set forth in many state statutes and commissions' rules, but one finds it, for example, in the 2011-2012 Internet and Electronic Commerce policy of the National Conference of State Legislatures: "As the use of the Internet continues to expand, any future or existing regulations must be balanced against market forces in a competitive and technology neutral manner, as *government must not choose the winners or losers of the digital age.*"[46]

We appreciate the attention Google, Vonage and others gave to competitive neutrality in their letter proposal filed August 18, 2011. Several of their proposals, particularly including contributions in this decisionmaking process, as well as the competitive neutrality of their proposals, are worth positive consideration. Competitive neutrality will help the Commission avoid excluding any future technologies that might achieve innovative results and economies for the Fund. Any approach that proposes to support only, or first, any particular group of carriers or technologies should be rejected as not in the broader public interest.

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[44] / *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 (para. 47) (1997) ("*USF First Report and Order*") (subsequent history omitted).

[45] / *Id., citing* Federal-State Joint Board on Universal Service, *Recommended Decision*, CC Docket No. 96-45, 12 FCC Rcd at 101 (1996).

[46] / NCSL Policy Positions, *2011-2012 Policies for the Jurisdiction of the Communications, Financial Services & Interstate Commerce Committee*, available at http://www.ncsl.org/default.aspx?TabID=773&tabs=854,15,690 (emphasis supplied).

B. A Right of First Refusal Would Discriminate Among New Technologies, Rather Than Providing An Even Playing Field Where Consumers May Choose Technologies That Best Meet Their Needs.

No carrier should have a right of first refusal over a portion of the Fund – certainly not as to support for areas where several carriers have made significant investments. All carriers serving an area deserve an equal opportunity to continue providing service to consumers. More importantly, consumers should retain the availability of these carriers to benefit from the universal service support deployed previously to afford them these choices. Dividing the support in the event several carriers participate in the program would ensure efficient usage and keep the Fund from expanding. In fact, CETCs currently divide up support and are subject to a firm cap on all support. This clearly creates efficiencies that the Commission should encourage among all recipients of support, rather than facilitating domination of support by any carrier or carriers or abandoning the principle of competitive neutrality.

If a right of first refusal must exist, it should go to providers of the most efficient and rapid means of deployment. This will reduce the size of the Fund. In the instant case, it also would enable continued provision of the newest technologies reflected in customers' connection choices.

C. The Fund Must Not Exclude From Support Areas Where An Unsubsidized Broadband Carrier Has Coverage.

Providing support to only one carrier in each area would make that carrier a monopoly in that area. **It would be unreasonable to require consumers to have a different phone for every census tract or block** in the event different carriers serve different areas, as is typically the case**.** Moreover, the agency would be burdened by endeavoring to determine which carrier provided broadband first in an area, or even whether any particular carrier is in fact serving an area. The existence of a carrier's cell site somewhere in a large defined area does not always

mean all customers in that area are within the signal coverage of that carrier's network. Accordingly, we urge the Commission to adopt a mechanism that will continue to allow supported CETCs to coexist while dividing the support. Again, we note that the wireline companies have painted CETC support as duplicative, but in fact, CETCs must split the support they receive – if two CETCs serve an area, they each receive only 50% of the available support, and so on. This is *not* duplicative; it is efficient *division* of the support.

Rural carriers often provide coverage, customer service and pricing best suited to rural customers' needs. MTPCS and its affiliates, for example, offer calling plans that are statewide or otherwise reasonable in pricing, in order to meet the needs of customers who could not otherwise afford broadband services. As another example of our consideration of local needs, we also provide 100% American jobs, including not only skilled engineering jobs and our highly trained retail representatives but also all customer service representatives – we and our affiliates do not outsource any jobs.

The GAO has shown that regional carriers invest more capital in their networks than larger carriers, as a percentage of service revenue.[47] This diligence, and its value to the national economy, should be recognized, not penalized. Abruptly removing funding for sites that are already or subsequently overbuilt would inject unacceptable uncertainty into business plans by unpredictably reducing the amount of support available for costs that are allocated over a region, such as the costs of a cell technician, software licenses, and the software and hardware maintenance plans required by equipment manufacturers. There is no rational investment scenario for 4G upgrades when a critical support component could be lost before a return is

[47] / GAO Report, *Telecommunications, Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry,* available at http://www.gao.gov/new.items/d10779.pdf, at 20 (July, 2010).

earned on that investment. Such risks, therefore, would preclude the necessary private investments.

Consumers should have freedom to choose their service based upon coverage, pricing, business plans, data options, customer service, and any other factors important to them. Each business, individual, or public safety organization has unique needs, and each service has unique abilities to meet those needs. In order to meet the diverse array of customers' communications needs, the Commission should adopt a model that calibrates support to the cost of serving a high cost area, determined by relevant factors, primarily population density and terrain, and then should divide that support amount (for a single modeled network in each area) among the carriers serving the area. Thus, support would never exceed the cost of a single network built with a model built with real-world average high-cost area costs – this is the opposite of duplicative – carriers will need to divide up the support if several serve an area. In the event a cost model includes revenues, the needs of lenders and investors for reasonable returns should also be considered. One cannot raise capital if there will not be a reasonable return for the lender or investor at the end.

The model we propose allows for capping support at a level between $150 and $250 per line[48] for the highest cost areas. This approach provides an incentive that could encourage a carrier to build an area as part of an overall regional strategy, even where support does not fully cover the directly associated costs of serving that area. It also establishes a future incentive should a new technology be developed that then permits construction and operation of a network with those support levels. This approach also eliminates the burden of determining where wireless coverage exists. Ascertaining the existence of coverage nationwide, as would be

[48] / The model proposed assumes 45% market capture divided among all eligible CETCs, and U.S. Census population estimates.

required in other plans that have been presented to the Commission, would be an extraordinarily difficult task involving many days of drive-testing. This process would then produce only a rapidly obsolete idea of coverage, as transmitters are frequently moved and adjusted to take into account changing populations, spectrum acquisitions, site acquisitions, new or altered major roads and buildings, and weather conditions. Fortunately, our model avoids the necessity of that task.

Furthermore, our model, unlike that suggested by US Cellular, does not eliminate support for areas deemed too expensive to serve. Rather than assuming such areas cannot be served, our model provides a capped support level. This controlled amount of support could incentivize some carrier to serve the area now or eventually, based upon a new, more efficient technology.

III. Phase-Ins and Phase-Downs Must Be Reasonable And Technology Neutral.

The transition to broadband must be competitively neutral. Section I.H asks about phase-ins and phase-outs of support. No type or classification of company or technology is more or less deserving of sufficient time to alter and implement new business plans and pay back existing loans. Many entities have many participants that have worked hard, invested their own funds, deployed complex technologies rapidly over brief periods of time in order to meet construction mandates, state coverage requirements, or marketplace economic imperatives, and generally labored in the public interest.

Any phase-out of support must not precede, but instead should deliberately pace, the phase-in of its replacement mechanism in order that there is no funding gap that would harm consumers. Otherwise, carriers such as MTPCS may have no choice but to decommission sites and reduce existing coverage that is relied upon by consumers, businesses, and public safety agencies. Unlike the Google/Sprint coalition, we agree with many rural incumbent landline

carriers that flash cuts are unreasonable; phase-outs and declines in support must be gradual in order to avoid local market shocks. Particularly regarding any mechanisms that will decrease existing support, a gradual glide path is essential in order to diminish any rapid impact upon local unemployment, state economies, and existing broadband service coverage.

All phase-outs and phase-ins should be equal as between differing technologies. It would not be equitable, for example, to provide four years to wireless CETCs and ten years to incumbent landline providers for phase-out of existing support.

Furthermore, the dates for submitting and deciding upon any waiver or exemption requests must be set well in advance of each date when phase-outs would commence and must also precede the dates for applications for the new support mechanisms. This timing is necessary in order to permit prudent planning of transitions and sufficient time for resulting network and business decisions to be implemented.

Additional Public Notice Responses - I.C.1 Network Costs, I.C.3 and II.D Rate Regulation and Reporting; I.E Benchmarks; I.F Network Sharing

This is to respond to a few additional questions in the Public Notice ("PN"). The PN asks, in Section I.C.1, whether the model should reflect the costs of building a network capable of meeting future consumer demand for higher bandwidth that can reasonably be anticipated five years from now. We think this should be left to individual business judgment. If the Commission makes what would otherwise be a private business decision, the Fund might be supporting unnecessarily frequent equipment overhauls.

The PN asks, in Section I.C.3, whether the agency should adopt requirements that supported carriers must report on pricing and usage allowances. In what appears to be a related question, Section II.D asks whether potential realization of consumer benefits of reduced long distance and wireless rates should be left to the market or should the FCC take steps to make sure

such benefits are realized by consumers. We believe rate regulation of CMRS would require an overhaul of precedent as regards mobile services, and may require evaluation of whether a dominant carrier or carrier exists rather than competition. After passage of the 1993 Omnibus Budget Reconciliation Act,[49] and Congressional amendment of Section 332 of the Act, the FCC preempted state rate regulation, and itself forebore from regulating CMRS rates.[50] The FCC may need to revisit that analysis and those proceedings. We urge the Commission not to adopt any rate regulations or paperwork burdens in this regard. At most, we believe rate regulation could entail an annual report on primary plans available on or near the time of reporting, because any extensive or frequent paperwork or regulation of rates would easily diminish the rapid pricing changes and promotions that have been a hallmark of competition benefiting consumers.

The Commission also asks about benchmarks, in Section I.E of the PN. We believe any benchmark must be separately set and analyzed for each technology at issue. Rate structures and costs differ significantly for each technology, based upon underlying costs, regulatory requirements, taxation and other assessments, and more.

Regarding the question in Section I.F, it appears to relate to incumbent landline services. CMRS is not a public utility; these are private businesses, which receive no guaranteed rate of return and accordingly need subscriber revenues to recoup the not insignificant costs and expenditures of running networks and the business. Our business plans do not anticipate and

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[49] / Pub. L. No. 103-66, Title VI, § 6002(b), amending the Communications Act of 1934 and codified at 47 U.S.C. § 332(d)(1) (*1993 Act*); *see also* 47 U.S.C. § 332(c)(1)(A).

[50] / *See* Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd. 1411, ¶¶ 124-219, 74 Rad. Reg. 2d (P & F) 835, 867-83 (1994). *Accord,* FCC denials of petitions filed by seven states to reinstate authority to regulate CMRS rates, which the Commission had determined was preempted under the 1993 Act. Petition of the Connecticut Dept. of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, PR Docket No. 94-106, Report and Order, FCC 95-199, released May 19, 1995, 10 FCC Rcd 7025, *aff'd sub nom.* Connecticut Dept. of Public Utility Control v. F.C.C. 78 F.3d 842 (2d Cir. 1996). *See also, e.g., Second Annual Competition Report,* at 3 (rel. March 25, 1997) (listing FCC actions facilitating competition in the commercial mobile radio services marketplace).

cannot accommodate opportunity losses for subscribers not gained because they were permitted to utilize network without paying the rates enabling its operation, upgrading and maintenance.

IV. Conclusion.

In conclusion, we urge the Commission to reject the ABC Plan and, albeit with respect to our friends in the ILEC community, to also reject the RLEC Plan. Instead, we propose a new Consumers and Cost Savings Plan including a wireless cost model, developed with CostQuest, in order to determine support by comparison to the deployment, operation and maintenance costs of rural mobile broadband providers. This cost model would be part of a competitively neutral support mechanism that disburses adequate amounts of not less than $1.3 Billion to mobile services providers for deployment, operation and maintenance of broadband matching or exceeding the speeds proposed by the Commission. This budget recognizes the recently skyrocketing growth in use of mobile broadband for Internet access, email, and even online video watching. This budget does not address satellite, which would be considered separately.

The Consumers and Cost Savings Plan does not exclude support for any carrier based on technology, or any right of first refusal, or unpredictable service in the same area by an unsupported provider (which can be difficult to measure, as coverage changes frequently). Thus, this Plan avoids the necessity of determining where cell site coverage exists, encourages the adoption of efficient broadband technologies and equitably results in rural deployment of technologies preferred by consumers. In the event the ABC Plan or some variant thereof is nevertheless adopted, we propose a small business exemption that would help meet the legal mandates of competition and rural/urban comparability, at an estimated $300 million per year. Finally, we offer support for States' continuing statutory authority to designate multiple recipients of high cost funding in an area, in recognition of their important role in considering

regional conditions and local needs. We urge the Commission to adopt the Consumers and Cost Savings Plan as a component of technology neutral support mechanisms for fixed and mobile technologies, in order to best serve the public interest.

Respectfully submitted,

MTPCS, LLC

By: 

Julia K. Tanner

MTPCS, LLC D/B/A CELLULAR ONE
1170 Devon Park Drive, Suite 104
Wayne, Pennsylvania 19087

CERTIFICATE OF SERVICE

I hereby certify that, on August 24, 2011, I caused a true and correct copy of the foregoing Comments to be served by electronic mail on the following:

Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554
Julius.Genachowski@fcc.gov

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, D.C. 20554
Michael.Copps@fcc.gov

Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554
Robert.McDowell@fcc.gov

Commissioner Mignon Clyburn
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554
Mignon.Clyburn@fcc.gov

Best Copy and Printing, Inc.
fcc@bcpiweb.com

By: 

Julia K. Tanner